



APPLICATION NUMBER	FILED DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO.
09/362,189	07/28/99	BESSETTE	S 45112-014
			EXAMINER

HM22/0606

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LEAD IN ART UNIT	PAPER NUMBER
1616	11

DATE MAILED: 06/06/01

 This is a communication from the examiner in charge of your application.
 COMMISSIONER OF PATENTS AND TRADEMARKS

OFFICE ACTION SUMMARY

☒ Responsive to communication(s) filed on 2/29/01
☐ This action is FINAL.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 D.C. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire _____ month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

- ☒ Claim(s) 1-15 is/are pending in the application.
- Of the above, claim(s) 1-4, 12-15 is/are withdrawn from consideration.
- ☐ Claim(s) _____ is/are allowed.
- ☒ Claim(s) 5-11 is/are rejected.
- ☐ Claim(s) _____ is/are objected to.
- ☒ Claim(s) 1-15 are subject to restriction or election requirement.

Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- ☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been
- ☐ received.
- ☐ received in Application No. (Series Code/Serial Number) _____
- ☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

- ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

- ☒ Notice of Reference Cited, PTO-892
- ☒ Information Disclosure Statement(s), PTO-1449, Paper No(s): 2
- ☐ Interview Summary, PTO-413
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Notice of Informal Patent Application, PTO-152

-SEE OFFICE ACTION ON THE FOLLOWING PAGES-

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Receipt is acknowledged of Request for Time and Response of 2/28/01 each.

Applicant's election with traverse of Group II with species of benzyl alcohol and pyrethrum in Paper No. 10 is acknowledged. The traversal is on the ground(s) that searches would overlap, thus a serious burden would not exist. This is not found persuasive because Examiner finds a thorough search of one invention/species does not mandate a thorough search of the others; an extended burden would exist to do so.

The requirement is still deemed proper and is therefore made FINAL.

Claims 1-4 and 12-15 stand withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention and species, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in Paper No. 10.

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 5 and 8 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

"Acceptable" is indefinite and relative term-as what, to whom? Such as is indefinite, and we suggest identifying in the claim all the appropriate pesticidal groups, including proparsite, and

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dropping the "other conventional" as this includes herbicidal and antifungal, antimicrobial conventional that are beyond the scope of this invention--i.e. the form is indefinite.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 8-11 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The "synergists" are not supported in the specification, for the claimed combinations--DMSO is not seen as a synergist, nor generally recognized as such.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371© of this title before the invention thereof by the applicant for patent.

Claims 5-8, 10, 11 are rejected under 35 U.S.C. 102(b) as being anticipated by Hink et al 4,933,371.

Linalool, both a plant essential oil compound col. 1, line 31-45), and a natural insecticide, is combined with an acceptable carrier, water (col. 4, line 33). Synergists are added (col. 6, line

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16-25). Additional essential oils are utilized (col. 7). Eugenol, alpha terpineol, with synergists, and linalool considered to be a natural insecticide. Other modes include chlorpyritos, organophosphates, with linalool (Col. 7, line 26-31). See also col. 16, bottom--more synergists.

Claims 5-8, 10, 11 are rejected under 35 U.S.C. 102(b) as being anticipated by Hasegawa et al 4,663,315.

Pesticidal compositions include acceptable carriers (organic solvents (col. 12, Example 65-96) with benzyl alcohol (75) and organo phosphate or other conventional pesticide (92-96).

Other modes called for synergists (col. 1, line 2-17).

Claims 5-11 are rejected under 35 U.S.C. 102(b) as being anticipated by BE 1002598).

Here we see Dimethyl sulfoxide equivalent to sesame oil and piperonyl butaxide as a synergist (p. 4, line 8-line 27) with pyrethrum or pyrethroid insecticides and essential oils (p. 3, line 7-21) teycineol). Additional natural insecticides are at p. 5-Rotenone and chrysarthernate esters; also, synthetic pyrethroids.

Claims 5-8, 10, 11 are rejected under 35 U.S.C. 102(b) as being anticipated by DE 4,421, 471.

Here too, natural pyrethrum and a synergist are provided with acceptable carriers and plant essential oil.

Claims 5-8, 10, 11 are rejected under 35 U.S.C. 102(b) as being anticipated by DE 3733640.

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See Beirpiel-pyrethrum, synergist and essential oils--alcohols, with acceptable carriers are known insecticides.

Claims 5-8, 10, 11 are rejected under 35 U.S.C. 102(b) as being anticipated by Guerring WO 9108670.

See p. 2, bottom--geraniol; Neem; see example--neem carriers conventional pesticide and synergist are shown.

Claims 5-11 are rejected under 35 U.S.C. 102(b) as being anticipated by Granirer et al 4,759,930 bolstered by Casida.

Here too; pyrethrum + peppermint oil or rosemary or eucalyptus, with acceptable carriers are insecticidal (col. 1, line 42-68). Since the pyrethrum includes lis-jasmone, chrysanthemic acid and pyrethrolone, it also excludes synergists as claimed (see Casida, p. 365-p. 32).

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 8-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hink et al 4,933,371 or Hasegawa et al 4,663,315 or BE 1002598 in view of DE 3733640 or DE 4421471 and Casida et al or Be 1002598.

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As shown above, the primary reference discloses the essence of the instant invention as claimed, but does not specify, each and every element of the instantly claimed compositions. However, the secondary references directed at the same compositions to solve the same problem of the primary reference do provide these additional elements.

All the critical elements of the instant invention are disclosed.

The selection of each ingredient is result effective parameter chosen to obtain the desired effects. It would be obvious to vary the nature of each ingredient to optimize the effects desired such as desired number of applications, length of time for desired protection, and ease of handling.

It would have been obvious to a person of ordinary skill in the art at the time the invention was made desiring to utilize insecticidal protection of natural compounds to use those of Mink, or Hasegawa, or BE-1002598 with the synergist as desired shown equivalent by Casida (p. 196, 197), or BE.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Neil Levy whose telephone number is (703) 308-2412. The examiner can normally be reached on Tuesday to Friday from 7:00 am to 5:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jose Dees, can be reached on (703) 308-4628. The fax phone number for the organization where this application or proceeding is assigned is (703) 305-3592.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1235.

Levy: mv

May 24, 2001

A handwritten signature in black ink, appearing to read "Neil S. Levy". The signature is fluid and cursive, with a large initial "N" and "L".

NEIL S. LEVY
PRIMARY EXAMINER